

REMARKS

In the Office Action mailed February 24, 2003, Claims 1, 2, 5, 6, 10 and 11 are rejected under 35 U.S.C. §102(b), as being anticipated by U.S. Pat. No. 4,968,542 issued to Gasper et al., as evidenced by U.S. Pat. No. 5,464,919 issued to Sinclair and U.S. Pat. No. 5,674,565 issued to Kausch et al. Claims 1-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 4,872,784 issued to Payne, in view of U.S. Pat. No. 5,421,677 issued to Adam et al. and vice versa. Claim 9 is rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 4,872,784 issued to Payne, in view of U.S. Pat. No. 5,421,677 issued to Adam et al. and vice versa and further in view of U.S. Pat. No. 4,582,750 issued to Lou et al. The Examiner made those rejections FINAL.

Rejections under 35 U.S.C. §102(b)

Claims 1, 2, 5, 6, 10 and 11 are rejected under 35 U.S.C. §102(b), as being anticipated by U.S. Pat. No. 4,968,542 issued to Gasper et al., as evidenced by U.S. Pat. No. 5,464,919 issued to Sinclair and U.S. Pat. No. 5,674,565 issued to Kausch et al. Claims 10 and 11 have been cancelled, thus obviating any grounds for rejection based upon those claims. Applicants respectfully disagree with the Examiner regarding the cited art.

At page 4, paragraph 11 of the instant Office Action, in reply to Applicants' arguments in the prior Response, the Examiner states,

"... it is noted that Gasper points to the used of woven or knit fabrics comprised of natural or synthetic fibers, where Gasper mentions materials similar to those employed in the instant specification. The polyurethane impregnates the fabrics, suggesting porosity." (Emphasis added).

Applicants maintain that "points to", mentioning "similar" materials and "suggesting" characteristics are not the standards for a rejection under 35 U.S.C. §102(b) and respectfully remind the Examiner that to anticipate a claim, a reference must teach every element of that claim.

"The identical invention must be shown in as complete detail as is contained in the ...claim."

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Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). (Emphasis added). Applicants respectfully contend that the Examiner has failed to point to where Gasper et al. fulfills this identity requirement.

Therefore, applicants respectfully request the Examiner reconsider and reverse her rejection of Claims 1, 2, 5 and 6 under 35 U.S.C. §102(b), as being anticipated by U.S. Pat. No. 4,968,542 issued to Gasper et al., as evidenced by U.S. Pat. No. 5,464,919 issued to Sinclair and U.S. Pat. No. 5,674,565 issued to Kausch et al.

Rejections under 35 U.S.C. §103(a)

A. As being unpatentable over U.S. Pat. No. 4,872,784 issued to Payne in view of U.S. Pat. No. 5,421,677 issued to Adam et al. and vice versa

Claims 1-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 4,872,784 issued to Payne, in view of U.S. Pat. No. 5,421,677 issued to Adam et al. and vice versa. Applicants respectfully disagree with the Examiner's contention regarding the cited art.

Applicants respectfully remind the Examiner of the Federal Circuit's admonition given in *In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1458-9 (Fed. Cir. 1998) that,

To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed.

Applicants respectfully contend that the Examiner has failed to do so in the Instant Office Action. At page 5, paragraph 12, of the Instant Office Action, the Examiner states that,

"...Payne indicates the preferred use of two blanket layers, where the use of two blanket layers would provide at least equal durability compared to an apparatus using one blanket layer."

Applicants note that the instant claims are directed to a two-ply polyurethane geotextile composite in which a dimensionally stable geotextile is bonded to a

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pliable geotextile. The Examiner also states in that same paragraph that, "(i)t has been held that the use of multiple layers of the same material would be obvious to amplify the benefits of the single layer." Applicants reiterate that the polyurethane geotextile composite of the instantly claimed invention has two layers of different materials, not multiple layers of the same material. Further, applicants respectfully request the Examiner cite to a decision so holding in support of her statement or withdraw that statement.

Therefore, applicants contend that nothing in the combined teaching of Payne in view of Adam et al. and vice versa would lead one of ordinary skill in the art to the instantly claimed invention and respectfully request the Examiner reconsider and reverse her rejection of Claims 1-8 under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 4,872,784 issued to Payne, in view of U.S. Pat. No. 5,421,677 issued to Adam et al. and vice versa.

B. As being unpatentable over U.S. Pat. No. 4,872,784 issued to Payne in view of U.S. Pat. No. 5,421,677 issued to Adam et al. and vice versa and further in view of U.S. Pat. No. 4,582,750 issued to Lou et al.

Claim 9 is rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 4,872,784 issued to Payne, in view of U.S. Pat. No. 5,421,677 issued to Adam et al. and vice versa and further in view of U.S. Pat. No. 4,582,750 issued to Lou et al. Applicants respectfully disagree with the Examiner's contention regarding the cited art.

Applicants' comments with respect to Payne in view of Adam et al. and vice versa with respect to the above rejection are equally applicable to the instant rejection. Neither Payne nor Adam et al. alone or in combination disclose or suggest the instantly claimed invention. Further, Lou et al. fails to add the missing teaching or suggestion that would lead one of ordinary skill in the art to the instantly claimed invention.

Therefore, applicants contend that nothing in the combined teaching of Payne in view of Adam et al. and vice versa and further in view of Lou et al. would lead one of ordinary skill in the art to the instantly claimed invention and respectfully request the Examiner reconsider and reverse her rejection of Claim 9 under 35 U.S.C.

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§103(a) as being unpatentable over U.S. Pat. No. 4,872,784 issued to Payne, in view of U.S. Pat. No. 5,421,677 issued to Adam et al. and vice versa and further in view of U.S. Pat. No. 4,582,750 issued to Lou et al.

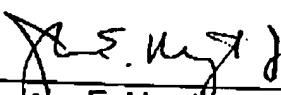
Conclusion

Applicants have cancelled Claims 10 and 11 and contend that such claim amendments add no new matter and find support in the specification.

Applicants submit that the instant application is in condition for allowance. Accordingly, reconsideration and a Notice of Allowance are respectfully requested for Claims 1-9. If the Examiner is of the opinion that the instant application is in condition for other than allowance, she is requested to contact the applicants' Attorney at the telephone number listed below, so that additional changes to the claims may be discussed.

Respectfully submitted,

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